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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,112	09/24/2003	Thomas J. Wheeler	OLYM/0095	8153

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EXAMINER

GUADALUPE, YARITZA

ART UNIT PAPER NUMBER

2859

DATE MAILED: 04/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/670,112

Applicant(s)

WHEELER ET AL.

Examiner

Yaritza Guadalupe McCall

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-10,12-15,19-31 and 33-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2,4-10,12-15,19-21 and 33-37 is/are allowed.
- 6) ☒ Claim(s) 1,22-31 and 33-37 is/are rejected.
- 7) ☒ Claim(s) 39 and 41 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

In response to Amendment filed January 7, 2005

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 26 and 27 are rejected under 35 U.S.C. 102(e) as being anticipated by Malard et al. ( US 6,735,879 ).

Malard et al. discloses a laser line generating device comprising a housing ( 12 ) supported by a base ( 28 ) having a laser generator ( 10, 42 ) coupled thereto and at least one attachment means ( 26 ) for attaching the laser device to a surface ( See Figure 9A ), the attachment means consisting of an anchoring assembly, i.e., retractable sharpened projections (26), said projections having a locking mechanism ( 22 ) for selectively securing said sharpened projections in a retracted position within an adapter member defined by the interior of the

housing. Malard also discloses a device further comprising a bubble vial ( 16, 18 ). Malard et al. discloses said assembly having a base having an adapter member ( 52 ) defining a compartment for receiving the power source.

3. Claims 22 - 25 are rejected under 35 U.S.C. 102(e) as being anticipated by Chen ( US 6,763,598 ).

Chen discloses a laser level assembly ( 1 ) comprising a base ( 4 ); a laser ( 3 ); and a lens assembly ( 5 ), wherein the lens assembly selectively aligns and positions one of at least two lenses with respect to the laser. Chen further discloses said lens assembly comprising at least three lenses ( 52 ) and wherein the lens assembly is rotatable ( See Column 2, lines 55 – 59 ). Chen also discloses said lens assembly comprising a rotary part ( 5 ) that spaces the at least two lenses on a plane in a circular arrangement and wherein the lens assembly comprises a rotary part that secures the at least two lenses on a plane in a circular arrangement, and a detent mechanism ( 43, 57 ), wherein a ball / protrusion ( 43 ) of the detent mechanism urges into a profile on an outside circumference of the rotary part.

Chen further discloses the lens assembly having a rotary part having a circular shaped center aperture ( 42 ) with a member ( 55 ) at least partially therein to attach the rotary part to the laser level assembly. Chen teaches a lens assembly ( 5 ) comprising multiple lenses, wherein a first lens provides a first symmetrical linear dispersion, since a reference light line is projected

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(See Columns 2 and 3, lines 52 – 54 and 5 – 15 respectively ) and a second lens provides an asymmetrical linear dispersion, and said third lens provides a circular dispersion since a reference light dot is projected and is oriented 90 degrees relative to the first lens when look from the front due to their separation along the diameter of the disk.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen ( US 6,763,598 ) in view of Schwandt ( US 5,063,679 ).

Chen discloses a device as stated in paragraph 3 above.

Chen does not disclose the at least one attachment means being a magnetic unit as stated in claim 1.

In regards claim 1 : Schwandt discloses a laser level tool comprising a base having a bottom surface ( 30 ) having an adapter unit ( 32 ), said adapter unit having a plurality of attachment means to help secure the instrument in place based on the surface to be mounted, one of said attachment means being a magnet ( 54 ) secured to the bottom of the base in order to attach the instrument to the working surface. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add an adapter unit with a magnet as taught by Schwandt to the bottom surface of the device disclosed by Chen in order to help secure the instrument in place based on the surface to be mounted and help improve the attachment of the device to a surface and prevent undesired displacement on any surface.

6. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Malard et al. ( US 6,735,879 ) in view of Schwandt ( US 5,063,679 ).

Malard et al. discloses a device as stated in paragraph 3 above.

Malard et al. does not disclose the adapter unit for use with an adhesive as stated in claim 28.

In regards claim 28 : Malard et al. discloses a device having retractable pins disposed in the bottom surface of the base ( 28 ). Schwandt discloses a laser level tool comprising a base having a bottom surface ( 30 ) having an adapter unit ( 32 ), said adapter unit having an adhesive ( 63 ) that helps secure the in place in order to attach the instrument to the working surface. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add an adapter unit with adhesive as taught by Schwandt to the bottom surface of the device disclosed by Malard et al. in order to provide a secondary connecting mechanism that will help improve the attachment of the device to a surface and prevent undesired displacement if the primary connecting mechanism fails.

7. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Malard et al. ( US 6,735,879 ) in view of Tursi ( US 4,924,597 ).

Malard et al. discloses a laser line generating device as stated in paragraph 2 above, comprising a housing ( 12 ) supported by a base ( 28 ) having a laser generator ( 10, 42 ) coupled thereto and at least one attachment means ( 26 ) for attaching the laser device to a surface ( See Figure 9A ), the attachment means consisting of an anchoring assembly, i.e., retractable sharpened projections (26), said projections having a locking mechanism ( 22 ) for selectively securing said sharpened projections in a retracted position. Malard et al. also discloses a device further comprising a bubble vial ( 16, 18 ).

Malard et al. does not disclose the belt clip as stated in claim 31.

Regarding claim 31 : Tursi further discloses a device having a belt clip ( 50 ) provided on a side wall of the housing ( 12 ), said belt clip being sized and configured to securely mount the housing to the user's belt ( See Column 3, lines 44 – 46 ). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add a belt clip as taught by Tursi to the device disclosed by Malard in order to provide a transporting mechanism that securely mounts the housing to the user's belt when the device is not being used.

8. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Malard et al. ( US 6,735,879 ) in view of Claxton ( US 5,394,616 ).

Malard et al. discloses a device as stated in paragraph 2 above.

Malard et al. does not disclose the 45-degree vial as stated in claim 30.

With regards to claim 30 : Malard et al. and Tursi disclose a device having bubble level vials (16, 18) but do not disclose the particular level vial being disposed at a 45 degree angle. Claxton discloses a laser positioning device comprising a plurality of level vials ( 41, 42, 43 ), one of said level vials ( 43 ) being disposed at a 45 degree angle ( See Figure 2 ) in order to function as identification means or position identifiers of the spatial orientation of the device.

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Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a bubble level vial at a 45 degree angle as taught by Claxton in the device disclosed by Malard et al. and Tursi in order to provide a fast visual indicator or identifier of the spatial orientation of the device.

9. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Malard et al. ( US 6,735,879 ) in view of Schwandt ( US 5,063,679 ) as applied to claim 28 above, and further in view of Dawson (US 5,379,524).

Malard et al. and Schwandt disclose a device as stated in paragraph 9 above.

Malard et al. and Schwandt do not disclose the compartment for storing the adhesive as stated in claim 29.

With respect to claim 29 : Malard et al. and Schwandt disclose an assembly having an adapter unit ( 52 ) for storing the power source but does not particularly teaches the storage of any additional components. Dawson teaches a tape measure tool having a housing ( 16 ) provided with a compartment ( 30 ) for storing spare parts ( 32 ) that may be needed during use of the tool. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a storage compartment as taught by Dawson to the assembly disclosed by Malard et al. and Schwandt in order to store spare parts or any additional component that may be needed during use of the tool.

10. Claims 38 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malard et al. (US Pub. No. 2004/0004825 ) in view of Schwandt ( US 5,063,679 ) and further in view of Dawson ( US 5,379,524 ).

Malard et al. discloses a leveling laser device comprising a base ( 12 ) having a laser (17) coupled thereto; and a member ( 14 ) removable from the base, said member having a flat surface (bottom surface).

Malard et al. does not disclose attaching an adhesive on one side of the member and a compartment on an opposite side for storing the adhesive as stated in claim 32.

Regarding the adhesive as stated in claim 32 : Schwandt discloses a laser level tool comprising a base having a bottom surface ( 30 ) having an adapter unit ( 32 ), said adapter unit having an adhesive ( 63 ) that helps secure the in place in order to attach the instrument to the working surface. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add an adapter unit with adhesive as taught by Schwandt to the bottom surface of the member disclosed by Malard et al. in order to provide a connecting mechanism that will help prevent undesired displacement of the tool while in use.

With respect to the compartment : Malard et al. discloses a member ( 14 ) that appears to be an open compartment, however, there is no clear indication in the specification for such a use.

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Dawson teaches a tape measure tool having a housing ( 16 ) provided with a compartment ( 30 ) for storing spare parts ( 32 ) that may be needed during use of the tool. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the assembly disclosed by Malard et al. by providing a storage compartment in said member as taught by Dawson in order to store spare parts or any additional component that may be needed during use of the tool.

The combination of Malard et al., Schwandt and Dawson teaches a laser line generator assembly capable of projecting a reference line on an object comprising the step of attaching a laser level to a surface ( See page 2, paragraph [0021]); rotating an adjustment handle ( 15 ) to provide micro adjustments of the laser level relative to the surface and within a plane of said surface; and projecting a laser on the object to display the reference line.

***Allowable Subject Matter***

11. Claims 2, 4 – 10, 12 – 15, 19 – 21, 33 - 37 are allowed.
12. Claims 39 and 41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

13. Applicant's arguments with respect to claims 1 – 2, 4 – 10, 12 – 15, 19 – 31 and 33 - 41 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yaritza Guadalupe whose telephone number is (571)272 -2244.

The examiner can normally be reached on 9:00 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**CHRISTOPHER W. FULTON**  
**PRIMARY EXAMINER**

Yaritza Guadalupe-McCall  
Patent Examiner  
Art Unit 2859  
April 4, 2005